

HOUSE _____ AMENDMENT NO. _____

Offered By _____

AMEND House Committee Substitute for Senate Bill No. 594, Pages 2-7, Section 392.602, by removing all of said section from the bill and inserting in lieu thereof the following:

“392.602. 1. In order to promote, encourage, and facilitate the deployment of electrical smart grid technologies, broadband communications and other similar advanced technologies to benefit citizens in rural areas of the state of Missouri, where a rural electric cooperative allows attachments on its distribution system poles, any telecommunications or broadband service provider shall have the right to attach, maintain, and operate its equipment on such poles in order to provide its services, provided that any such attachment complies with the provisions of this section. No attachments shall be made before a written agreement exists between the rural electric cooperative pole owner and the attaching entity, where all the terms and conditions of such written agreement have been mutually agreed to by each party or, where not mutually agreed to, determined under the provisions of subsection 4 of this section. For purposes of this section, "broadband" shall mean those types of technologies capable of providing high speed internet access, as defined by the Federal Communications Commission, and shall include but not be limited to digital subscriber line, cable modem, fiber optics, fixed wireless, mobile or cellular broadband, broadband over power lines, and WiMax technologies. Unless otherwise specifically set forth in this section, this section shall be interpreted in a manner consistent with the applicable Federal Communications Commission's rules for pole and conduit attachments, and nothing in this section shall be construed as conferring any jurisdiction or authority of the commission to regulate either the rates, terms, or conditions for attachments or to assert any jurisdiction or regulation over pole attachments under Section 224 of the Communications Act of 1934, as amended. The provisions of this section, except for subsections 6 and 8, shall apply to cable television providers and others transmitting information by wire, radio, optical cable, electronic impulses, wireless technology, or other means that are not capable of providing broadband, and in the case of such providers, the law in effect prior to August 28, 2012, governing easements shall continue to apply.

2. The written agreement shall require attaching entities to inform the rural electric

1 cooperative pole owner on whose system any equipment is to be attached of its intent to attach
2 and the specific location of the attachment prior to attaching any such equipment. Unless
3 otherwise agreed, the rural electric cooperative pole owner shall respond within fifteen business
4 days of the attaching party's notice, except when such response is not possible within such
5 timeframe in cases where the rural electric cooperative pole owner or attaching entity is engaged
6 in large-scale, emergency repairs or disaster response efforts, as to whether the attachment may be
7 made without modifications to the pole, or whether additional requirements must be met prior to
8 allowing the attachment in order to ensure system safety, reliability, and pole integrity. All
9 attachments shall be made in accordance with safety and reliability codes applicable to the rural
10 electric cooperative pole owner's distribution system as may be promulgated by any governmental
11 agency or instrumentality of appropriate jurisdiction. If an attaching entity causes damages to, or
12 improperly attaches equipment, such that it jeopardizes the safety, integrity, reliability of, or
13 creates replacement issues with respect to the rural electric cooperative distribution system
14 owner's pole or system, the attaching entity shall, at a minimum, pay to the rural electric
15 cooperative pole owner the reasonable costs for any repairs or modification that are necessary to
16 ensure the safe, reliable, and effective operation of the rural electric cooperative distribution
17 system and the attached equipment. In case of a conflict that cannot otherwise be addressed
18 through necessary make ready work, repairs, or pole replacements, to be paid for by the attaching
19 entity whose pole attachment or pole attachment request is responsible for same, the continued
20 reliability and safety of the rural electric cooperative pole owner's distribution system shall have
21 priority over the attachments. The parties shall provide in the written agreement, in addition to
22 reasonable remedies for the attaching party's breach of the agreement, appropriate and reasonable
23 remedies for unauthorized attachments, including any compensation amount that shall be paid in
24 addition to the past-due pole attachment fee for each such attachment. Notwithstanding any
25 provision in this subsection, any provisions in an existing contract as of August 28, 2012, that
26 govern unauthorized pole attachments shall remain in full force and effect until such contract
27 expires or is terminated in accordance with its terms.

28 3. The rural electric cooperative distribution system pole owner shall be entitled to a
29 reasonable fee for permitting attachments to its rural electric cooperative distribution system
30 poles. Any pole attachment fee charged by a rural electric cooperative pole owner shall be agreed
31 to between the parties and shall be assessed on a per-pole basis. Such pole attachment fees shall
32 not exceed the reasonable costs to the rural electric cooperative pole owner's system of
33 accommodating the requested attachments based on the current costs of such equipment calculated
34 in a manner similar to the Federal Communications Commission rules for pole and conduit
35 attachments. In addition, if the rural electric cooperative pole owner can provide competent
36 evidence of additional cost-based inefficiencies in the maintenance of its system due solely to the

1 presence of the attached equipment, the rural electric cooperative pole owner may increase the
2 pole attachment fee by a corresponding reasonable amount in the event that such costs are not
3 paid to the rural electric cooperative pole owner through the operation of some other provision of
4 the agreement between the rural electric cooperative pole owner and the attaching party.
5 Notwithstanding the forgoing, any contracts in existence as of August 28, 2012, for pole
6 attachments shall remain in full force and effect until such contracts expire or are terminated in
7 accordance with their terms. At the expiration of the term of any such existing contract, the pole
8 attachment fee in the new agreement shall not be subject to any increase greater than ten percent
9 per year over the most recent previously established pole attachment fee, provided however, that if
10 the rural electric cooperative pole owner can provide competent evidence that the previously
11 established pole attachment fee was set at fifty percent or more below the rural electric
12 cooperative pole owner's cost, using the cost determination requirements under this subsection,
13 the pole attachment fee in the new agreement then shall not be subject to an increase greater than
14 twenty percent per year over the most recent previously established pole attachment fee. In either
15 case, the pole attachment fee in the new agreement shall not exceed the rural electric cooperative
16 pole owner's reasonable costs calculated in the manner specified in this subsection and shall be
17 calculated on a per-pole basis.

18 4. If the parties cannot agree on any provision of the written agreement required under this
19 section, including a reasonable pole attachment fee, either party may demand nonbinding
20 mediation. If mediation is unsuccessful in producing agreement on the disputed issue, the rural
21 electric cooperative pole owner shall decide the issue, provided that in the case of a disputed pole
22 attachment fee, the fee shall comply with the limits set forth in subsection 3 of this section. If the
23 attaching entity believes the pole attachment fee set by the rural electric cooperative pole owner
24 exceeds the standards provided in this section or the attaching entity otherwise disputes the
25 decision of the rural electric cooperative pole owner, it may file a petition in the circuit court of
26 any county in which the rural electric cooperative pole owner maintains an office for the conduct
27 of its business. The circuit court shall hear evidence presented by the parties as to the use being
28 made by the attaching entity and as to the relevant costs and shall make a determination regarding
29 the disputed issue or issues. If found to be reasonable, the court shall approve the rural electric
30 cooperative pole owner's decision, provided that in cases involving a disputed pole attachment
31 fee, the pole attachment fee to be paid for such attachments shall be determined in compliance
32 with the limits set forth in subsection 3 of this section.

33 5. If the rural electric cooperative pole owner files a suit to collect any money for pole
34 attachments that it believes is due and owing to the rural electric cooperative pole owner based on
35 the terms of an agreement between the pole owner and the attaching entity and the court
36 determines that an amount is due and owing to the rural electric cooperative pole owner, the rural

1 electric cooperative pole owner may recover the amount owed for the pole attachments, any
2 interest and additional compensation provided for under the agreement, and reasonable attorney
3 fees as determined by a court of competent jurisdiction. If the rural electric cooperative pole
4 owner fails to recover any amount in such collection action, the attaching entity may recover
5 reasonable attorney fees as determined by a court of competent jurisdiction. Prior to filing any
6 collection action, the rural electric cooperative pole owner shall provide forty-five days' notice to
7 the attaching entity that an amount is owed and that the rural electric cooperative pole owner will
8 file a collection action if payment is not made in full within the notice period. Nothing in this
9 section precludes the rural electric cooperative pole owner from also pursuing in a court of
10 competent jurisdiction any available legal or equitable remedy, including but not limited to
11 injunctive relief and monetary damages, against an attaching entity that does not have a valid
12 written agreement for such attachments with the rural electric cooperative pole owner or for
13 violations of this section or any of the terms of the written agreement.

14 6. For all easements and right-of-way interests acquired prior to August 28, 2006,
15 provided the pole attachment or the replacement of existing lines or operating equipment does not
16 result in an additional unreasonable burden on or a diminution in value of the property owner's
17 property, no telecommunications transmission or rural electric cooperative system pole owner
18 shall be required to secure by additional consent, contract, or agreement or by condemnation the
19 right to permit the attachment or the replacement of lines or operating equipment of
20 telecommunications and broadband service providers and rural electric cooperatives upon the
21 telecommunications transmission or rural electric cooperative system owner's poles and related
22 real property or easements from an owner of property upon which a pole owner's
23 telecommunications transmission or rural electric cooperative system is located. Unless otherwise
24 expressly prohibited in a recorded easement or other legally binding document, the
25 telecommunications transmission or rural electric cooperative system pole owner's authority to
26 reasonably permit such an attachment or to replace existing lines or operating equipment shall be
27 deemed to be consistent with and not beyond the scope of the principal, intended and authorized
28 use of the telecommunications transmission or rural electric cooperative system pole-owner's
29 poles, related real property or easements.

30 7. Nothing in this section shall be construed to deny a property owner reasonable
31 compensation for any increased interference with or a diminution in fair market value of the
32 property owner's property directly resulting from any pole attachment or the replacement of
33 existing lines or operating equipment authorized under this section. If after good faith
34 negotiations the parties cannot agree on the amount of such reasonable compensation, a property
35 owner may file a claim for compensation for the use of lines, wires, cables, poles, or other
36 structures and for compensation related to the attachment or the replacement of existing lines or

1 operating equipment of telecommunications service providers or rural electric cooperatives. In
2 any such proceeding the amount of damages, if any, shall be limited to an amount sufficient to
3 compensate the property owner for the diminution in fair market value of the property or the
4 increased interference with the owner's use of the property, if any, caused by any new or
5 additional physical attachments to or the replacement of lines or operating equipment of the
6 telecommunications transmission or rural electric cooperative system. Evidence of revenues or
7 profits derived by telecommunications service providers or rural electric cooperatives from
8 providing the services specified in subsection 1 of this section is not admissible in any proceeding
9 by the property owner to recover damages.

10 8. In addition to the compensation provided for in subsection 7 of this section, a
11 landowner may request to receive from a rural electric cooperative pole owner a one-time
12 payment of five hundred dollars per mile prorated for the distance the attached line crosses the
13 landowner's property with a minimum payment of one hundred dollars per parcel under the
14 following circumstances:

15 (1) The rural electric cooperative's easement or right-of-way interest was acquired prior to
16 August 28, 2006, and does not expressly prohibit use of the rural electric cooperative's facilities
17 for broadband or similar communications use; and

18 (2) The size of the rural electric cooperative's transmission line located on the landowner's
19 property is 34.5 kilovolts or above and has broadband communications facilities that are a part
20 thereof or attached thereto; and

21 (3) The parties agree, or a court of competent jurisdiction has determined, that the rural
22 electric cooperative's then-existing easement or right-of-way interest does not permit the
23 attachment of broadband communications facilities or the use of electric facilities on the easement
24 or right-of-way interest for broadband communications purposes; and

25 (4) The landowner grants in writing an easement to the rural electric cooperative, fully
26 binding on the landowner's successors and assigns until abandoned by the rural electric
27 cooperative, that authorizes the use of the rural electric cooperative's electric facilities for
28 broadband communications purposes; and

29 (5) The landowner makes application for payment in writing to the cooperative within one
30 year of August 28, 2012, if the broadband communications facilities were installed on or before
31 August 28, 2012, or if the broadband facilities were installed after August 28, 2012, within one
32 year of the initial installation date of the broadband communications facilities.

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34 The payment fixed under this subsection, combined with any amounts calculated under subsection
35 7 of this section, if any, shall be presumed to be the total amount owed for the use of the electric
36 easements or right-of-way interests for broadband communications purposes. This presumption

1 may only be rebutted by competent evidence that the broadband communications use has caused
2 an additional diminution in fair market value of the landowner's property or additional
3 interference with the owner's use of the property as provided for under subsection 7 of this
4 section.

5 9. Nothing in this section shall be construed to deny a property owner reasonable
6 compensation for physical damages to the property owner's property directly resulting from any
7 pole attachment or the replacement of lines or operating equipment authorized under this section.
8 If after good faith negotiations the parties cannot agree on the amount of such reasonable
9 compensation, an owner of property upon which a telecommunications transmission or rural
10 electric cooperative system owner's pole is located may file a petition in the circuit court of the
11 county in which the property is situated for the recovery for physical property direct damages
12 related to the attachment of the operating equipment of an attaching entity and any other
13 compensation to which such owner might be entitled.

14 10. Section 523.283 shall continue to govern and apply to all easements or right-of-way
15 interests acquired after August 28, 2006. Nothing in this section shall be construed to abrogate or
16 conflict with the provisions of chapter 523, nor to otherwise confer the power of eminent domain
17 on any entity not granted such power prior to August 28, 2012, nor to prevent a landowner from
18 voluntarily entering into any agreement with any other entity for use of the landowner's property
19 provided that such agreement is subordinate to and does not conflict with the property rights and
20 uses authorized in any easement or right-of-way interest previously granted by the landowner or
21 by the landowner's predecessors in interest.

22 11. Notwithstanding the provisions of section 1.140 to the contrary, the provisions of this
23 section are nonseverable, and if any provision is for any reason held to be invalid, such decision
24 shall invalidate all of the remaining provisions of this section.”; and
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26 Further amend said bill by amending the title, enacting clause, and intersectional references
27 accordingly.
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